Sykt Perniagaan United Aces Sdn Bhd & Ors v Majlis Perbandaran Petaling Jaya

FEDERAL COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-728-93
ANUAR CJ (MALAYA), MOHD AZMI AND WAN YAHYA FCJJ
4 OCTOBER 1996

Local Government — *Streets — Temporary closure of road — Local authority could temporarily close public place under its control — Whether terms 'street' and 'public place' have analogous meaning — Whether temporary closure of road was ultra vires the Local Government Act 1976 — Local Government Act 1976 s 65*

Words and Phrases — *'Public place' and 'street' — Local Government Act 1976 s 2*

Statutory Interpretation — *Canons of construction — Noscitur a sociis — Whether meaning of phrase must be associated with words which accompanied it*

The respondent, a municipal council ('the MPPJ'), had relocated a group of night market hawkers to a new trading site along Jalan SS 21/60 ('the road'). This would result in a temporary closure of the road between 5pm to 7am in order to turn it into a night market. Five of the tenants/occupiers ('the appellants') of the road filed an application for certiorari to quash the decision of the MPPJ. The application was dismissed with costs on the ground that under s 65 of the Local Government Act 1976 ('the Act') which allows a local authority to temporarily close any public place under its control, the MPPJ was empowered to close part of the road between 5pm to 7am. In his grounds of judgment, the learned judge referred to the definitions of a 'public place' and 'street' as set out in the Act and held that a street was a 'public place' within the meaning of s 65 of the Act. The issue was whether the word 'street' in s 2 of the Act fell under the definition of 'a public place' in the same section or vice versa, ie 'public place' could be construed as a 'street'. Counsel for the respondent further submitted that the words 'parking place' in the definition of 'public place' was used in association with other words to describe the meaning of a public place and with regard thereto, urged the court to apply the principle of *noscitur a sociis* so as to arrive at the conclusion that a public place would include a street. Counsel for the appellants, objected to this line of interpretation as the term 'public place' and 'street' was clearly defined in the Act and therefore could not be the subject matter of ambiguity.

Held, allowing the appeal:

(1) If there were any words at all to suggest susceptible analogous meaning between the definitions of 'public place' and 'street', they were to be found in the words 'open space' in the former and the term 'open court or open alley' in the latter definitive words. It was obvious from the definitions of 'public place' and

'street' that the terms 'open space' in the former and 'open court or open alley' in the latter were intended for two different venues. It was also obvious that Parliament had designated distinctive descriptions to these two differing locations. Therefore, it was clear that the two terms did not have analogous meaning (see pp 400F–I and 401A).

(2) Even with the application of the principle of *noscitur a sociis*, the word 'street' was not analogous to the words 'parking place' which formed part of the definition of 'public place'. The term 'parking place' must be associated with the words which accompanied it, viz 'open space', 'garden' and 'recreation and pleasure ground' — all of which referred to places for pleasure and recreation and not to a thoroughfare. In any event, it was clear that through the definition of 'public place', the legislature intended to confer to the public a right of access only and not a right of way (see pp 402C, 401I and 402A–B); *Buddham Singh v Nabi Bux* AIR 1962 All 43, *Garforth (Inspector of Taxes) v Newsmith Stainless Ltd* [1979] 1 WLR 409, *Vestry of St Mary Islington v Barrett* (1874) LR 9 QB 278, *George Robinson v Local Board of Barton-Eccless, Winton and Monton* (1883) 8 App Cas 798, *Corporation of Portsmouth v Smith* (1883) 13 QBD 184, *Davis v Board of Works for Greenwich District* [1895] 2 QB 219 and *Ashby v Tolhurst* [1937] 2 KB 242 followed.

(3) Therefore, the temporary closure of a road, even part of it as in the present case, in order to turn it into a night market which in turn had resulted in obstruction, health hazard and a situation clearly detrimental to the residents of premises along the road, was ultra vires the Act and against the public rights of road users (see p 402C–D).

[Bahasa Malaysia summary

Pihak penentang, sebuah majlis perbandaran ('MPPJ'), telah menempatkan semula sekumpulan peniaga pasar malam ke suatu tapak perniagaan yang baru di sepanjang Jalan SS 21/60 ('jalan tersebut'). Ini telah mengakibatkan penutupan sementara jalan tersebut di antara pukul 5 petang dan 7 pagi bagi membolehkannya digunakan sebagai suatu tapak pasar malam. Lima daripada penyewa/penghuni ('perayu-perayu') di jalan tersebut memfailkan suatu permohonan untuk certiorari bagi membatalkan keputusan MPPJ. Permohonan itu ditolak dengan kos atas alasan bahawa di bawah s 65 Akta Kerajaan Tempatan 1976 ('Akta tersebut') yang membenarkan sesebuah pihak berkuasa tempatan menutup buat sementara mana-mana tempat awam di bawah kawalannya, MPPJ mempunyai kuasa untuk menutup sebahagian daripada jalan tersebut di antara pukul 5 petang dan 7 pagi. Dalam alasan penghakiman beliau, hakim yang arif telah merujuk kepada tafsiran sebuah 'tempat awam' dan 'lebuh' seperti yang ditetapkan dalam Akta tersebut dan memutuskan bahawa suatu lebuh adalah suatu 'tempat awam' dalam

lingkungan maksud s 65 Akta tersebut. Isu yang harus dipertimbangkan adalah sama ada perkataan 'lebuh' dalam s 2 Akta tersebut termaktub di bawah tafsiran 'sebuah tempat awam' dalam seksyen yang sama atau begitu juga sebaliknya, iaitu 'tempat awam' boleh ditafsirkan sebagai suatu 'lebuh'. Peguam untuk penentang selanjutnya menghujahkan bahawa perkataan-perkataan 'tempat letak kereta' dalam tafsiran 'tempat awam' digunakan berkaitan dengan perkataan lain bagi menggambarkan maksud sebuah tempat awam dan berhubung dengan hal itu, meminta mahkamah memakai prinsip *noscitur a sociis* bagi mencapai kesimpulan bahawa sebuah tempat awam meliputi sesuatu lebuh. Peguam untuk perayu-perayu membantah terhadap hujah atas tafsiran ini sebab terma 'tempat awam' dan 'lebuh' ditafsirkan dengan jelas dalam Akta tersebut dan dengan itu tidak boleh menjadi perkara subjek ketaksaan.

Diputuskan, membenarkan rayuan:

(1) Jika pun terdapat apa-apa perkataan bagi mencadangkan makna mudah yang serupa antara tafsiran 'tempat awam' dan 'lebuh', ia boleh didapati dalam perkataan-perkataan 'lapangan terbuka' dalam tafsiran yang pertama dan terma 'halaman terbuka atau jalan kecil terbuka' dalam tafsiran yang kedua. Adalah jelas daripada tafsiran 'tempat awam' dan 'lebuh' bahawa terma 'lapangan terbuka' dalam yang pertama dan 'halaman terbuka atau jalan kecil terbuka' dalam yang kedua dihasratkan untuk dua makna yang berlainan. Adalah juga jelas bahawa Parlimen telah menandakan gambaran tersendiri untuk kedua-dua tempat yang berlainan ini. Oleh yang demikian, adalah jelas bahawa kedua-dua terma itu tidak mempunyai makna yang serupa (lihat ms 400F–I dan 401A).

(2) Jika pun prinsip *noscitur a sociis* terpakai, perkataan 'lebuh' tidak serupa dengan perkataan-perkataan 'tempat letak kereta' yang membentuk sebahagian daripada tafsiran 'tempat awam'. Terma 'tempat letak kereta' mestilah dikaitkan dengan perkataan-perkataan bersertanya, yakni 'lapangan terbuka', 'kebun bunga' dan 'taman rekreasi dan bersuka-suka' — kesemuanya merujuk kepada tempat-tempat untuk keseronokan dan rekreasi dan bukan kepada sebatang jalan tembus. Walau bagaimanapun, adalah jelas bahawa menerusi tafsiran 'tempat awam', perundangan berhasrat untuk mengurniakan hak akses sahaja dan bukannya hak lalu-lalang kepada masyarakat awam (lihat ms 402C, 401I dan 402A–B); *Buddham Singh v Nabi Bux* AIR 1962 All 43, *Garforth (Inspector of Taxes) v Newsmith Stainless Ltd* [1979] 1 WLR 409, *Vestry of St Mary Islington v Barrett* (1874) LR 9 QB 278, *George Robinson v Local Board of Barton-Eccless, Winton and Monton* (1883) 8 App Cas 798, *Corporation of Portsmouth v Smith* (1883) 13 QBD 184, *Davis v Board of Works for Greenwich District* [1895] 2 QB 219 dan *Ashby v Tolhurst* [1937] 2 KB 242 diikut.

(3) Oleh itu, penutupan sementara sebatang jalan, meskipun sebahagian daripadanya seperti dalam kes ini, bagi menjadikannya sebuah pasar malam yang pula telah mengakibat dalam halangan, ancaman kepada kesihatan dan keadaan yang nyata menjejaskan penduduk premis di sepanjang jalan tersebut, adalah ultra vires Akta tersebut dan bertentangan dengan hak awam para pengguna jalan raya (lihat ms 402C–D).]

Notes

For cases on *noscitur a sociis*, see 11 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1442–1446.

For cases on the local government's authority over streets, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 160–161.

Cases referred to

Ashby v Tolhurst [1937] 2 KB 242 (folld)
Buddham Singh v Nabi Bux AIR 1962 All 43 (folld)
Corporation of Portsmouth v Smith (1883) 13 QBD 184 (folld)
Davis v Board of Works for Greenwich District [1895] 2 QB 219 (folld)
Garforth (Inspector of Taxes) v Newsmith Stainless Ltd [1979] 1 WLR 409 (folld)
George Robinson v Local Board of Barton-Eccless, Winton and Monton (1883) 8 App Cas 798 (folld)
RV Strachan (1872) 41 LJQB 210 (folld)
Vestry of St Mary Islington v Barrett (1874) LR 9 QB 278 (folld)
Western Counties Ry v Windsor and Annapolis Ry Co (1882) 7 App Cas 178 (refd)

Legislation referred to

Local Government Act 1976 ss 2, 63, 65, 67

Appeal from: Originating Motion No R8–25–106–89 (High Court, Kuala Lumpur)

Joy W Appukuttan (*Wang Kuo Shing & Co*) for the plaintiffs.
Shahul Hameed (*Alex Charles* with him) (*Noorashikin Alex & Rakan-rakan*) for the defendant.

Cur Adv Vult

Wan Yahya FCJ (delivering the judgment of the court): In an article appearing in *The Malay Mail* dated 4 July, captioned 'ILLEGAL TRADERS TO MOVE — Hawkers' filth is unbearable':

> ... a Majlis Perbandaran Petaling Jaya's ('the MPPJ') councillor, while commenting on the state of affairs created by illegal traders along Jalan SS 21/39 Damansara Utama and the relocation of their activities to Jalan SS 21/60, was reported to have said: 'The condition here is unbearable,

some of them were put in squatter houses amongst the stalls .... There is no compromise on hygiene, the public health is at stake.'

As a matter of fact, the councillor was merely announcing a matter which had been discussed and decided at a meeting of the Health Committee of the MPPJ held on 26 May 1989.

The minutes of the meeting as reproduced by the learned trial judge indicated that the MPPJ would provide specific lots to hawkers in Jalan SS 8/3 and SS 21/60; that the use of push carts as approved by the MPPJ be suggested for use by the hawkers in place of the fixed stalls; and that business be carried out on one half of the road at night (between 5pm to 7am). There were also several conditions imposed on the would-be licensed hawkers.

The real reason behind the MPPJ's drastic action is contained in a preceeding paragraph of the minutes which was not cited by the learned High Court judge but which was made available to us during the appeal in its original form, the text of which reads:

3.2.1 Mesyuarat telah diberitahu bahawa banyak aduan diterima berikutan adanya peniaga-peniaga tanpa lesen di kawasan itu. Peniaga-peniaga tersebut menimbulkan masalah kekotoran, menghalang lalulintas dan menghalang untuk meletak kereta. Keadaan kebersihan di situ juga tidak dapat dikawal. Encik Ho Sai Kong mahukan langkah yang wajar diambil memandangkan peniaga-peniaga telah berniaga di situ sekian lama. Encik Ho Sai Kong juga berharap masalah ini dapat diselesaikan supaya aduan sedemikian tidak akan berulang lagi.

3.2.2 Setelah mengkaji dengan teliti, mesyuarat telah bersetuju bahawa pihak Majlis dikehendaki melaksanakan perkara-perkara berikut:

(1) Satu kawasan untuk ruang petak disediakan bagi semua penjaja di Jalan SS 21/60 dan SS 21/39, Petaling Jaya di kawasan berhampiran.

(2) Mencadangkan supaya kereta tolak bergerak digunakan untuk menggantikan gerai tetap yang ada sekarang. Dengan itu, kawalan kebersihan seperti pembersihan longkang dan sebagainya lebih mudah dilakukan. Rekabentuk kereta tolak hendaklah diluluskan oleh MPPJ.

(3) Penjaja-penjaja hanya dibenarkan berniaga pada waktu malam dan setelah selesai berniaga, kawasan tersebut hendaklah dikosongkan. Dengan ini, jalan tersebut tidak lagi dihalang.

(4) Perniagaan hendaklah dijalankan di sebelah jalan sahaja.

(5) Sekiranya Syarikat Pembinaan See Hoy Chan mempunyai cadangan untuk membina bangunan perniagaan di kawasan tersebut, komplek penjaja hendaklah dibina di situ untuk menampung bilangan penjaja yang ada di kawasan tersebut.

3.2.3 Pengerusi Jawatankuasa Kecil bersetuju berjumpa dengan pemaju untuk mendapatkan kawasan bagi menampung penjaja-penjaja di situ.

It could be seen from the above minutes that the MPPJ was forced into an uncompromising situation by the hawkers' own misconduct and extremely unhealthy habits. According to the minutes, these hawkers not only created health problem by their unhygenic habits but they also obstructed traffic and prevented motorists from parking vehicles. Thus, it was decided to relocate them to the nearby Jalan SS 21/60.

Old habits die hard, and so as disclosed in the affidavit and seen in the photographs exhibited in the application for certiorari that despite the conditions imposed by the MPPJ, the relocated hawkers persisted with their filthy or obstructive habits and it would appear that the MPPJ had only succeeded in moving their previous problems in Jalan SS 21/39 onto the doorsteps of the tenants and occupiers of the premises on Jalan SS 21/60.

Anyway, the tenants/occupiers of the relocated site of Jalan SS 21/60 and Jalan SS 21/62 anticipated the outcome well before hand and so about 130 of them appealed to the MPPJ to reconsider the proposed plan. There was no evidence to show whether the appeal was considered but evidently the MPPJ went on with the relocation as planned. And so, on 14 September 1989, five of these tenants, shopkeepers and occupiers filed and obtained leave to issue certorari. At the substantive hearing on certiorari, the application was dismissed with costs.

The hypothesis behind the dismissal was that under s 65 of the Local Government Act 1976 ('the Act'), the MPPJ was empowered to do what it did, ie to close part of the road between 5pm to 7am. In his grounds of judgment, the learned judge having referred to the definitions of a 'public place' and 'street' as set out in the Act, arrived at the conclusion that a street is a 'public place' within the meaning of s 65 of the Act.

For the purpose of our deliberations on this conclusion, we set out hereunder various sections of the Act which were cited during the hearing before this court and the court below.

s 2 'public place' means any open space, parking space, garden recreation and pleasure ground or square, whether enclosed or not set apart or appropriated for the use of the public or to which the public shall at any time have access;

'street' includes any road, square, footway, passage or service road, whether a thoroughfare or not, over which the public have a right of way, and also the way over any bridge, and also includes any road, footway or passage, open court or open alley, used or intended to be used as a means of access to two or more holdings whether the public have a right of way over it or not, and all channels, drains and ditches at the side of any street shall be deemed to be part of such street;

s 63 A local authority shall have the general control and care of all places within the local authority area which have been or shall be at any time set apart and vested in the local authority for the use of the public or to which the public shall at any time have or have acquired a common right.

s 65 A local authority may temporarily close any public place vested in it or under its control. A

s 67(1) A local authority may permanently close or divert any public street or permanently close any public place or alter the boundaries thereof: ...

Out of the four above-cited sections, we do not consider s 63 of the Act to be of direct relevance as the provisions therein are only intended to spell out the general authority over care and control of public place by the local authority. As regards s 67 of the Act, we have noted that the conditions as stipulated under that section have not been complied with and in any event, counsel for the respondent has expressed that he was not relying on that section to support his argument before this court. Thus, we are left with only one issue in this appeal and that is whether the word 'street' can fall under the particular word appearing in the definition of 'a public place' or vice versa, ie 'public place' can be construed as a 'street'. Such analysis was not to be found in the judgment. However, in the argument before us, Mr Shahrul Hameed for the respondent, drew our attention to the particular words 'parking place' which was used in association with other words to describe the meaning of a public place and with regard thereto, urged us to apply the principle of *noscitur a sociis* so as to arrive at the conclusion that a public place would include a street. B C D

Mr Appukuttan, counsel for the appellants, objected to the line of interpretation as the term 'public place' and 'street' have been clearly defined in the Act and therefore could not be the subject matter of ambiguity. We are inclined to agree with Mr Appukuttan. In our opinion, if there are any words at all to suggest susceptible analogous meaning between the definition of 'public place', and 'street', they are to be found in the words 'open space' in the former and the term 'open court or open alley' in the latter definitive words. In comparing these two terms, one must not lose sight of the accompanying phrase which qualifies them. In the definition of 'public place', the language employed was: E F

> any open space ... for the use of the public or to which the public shall at all time have access. G

Whereas in the definition of 'street', it contained the following qualification:

> ... open court or open alley used or intended to be used as a means of access to two or more holdings ... . H

It is obvious from the above definitions that the term 'open space' and 'open court or alley' are intended for two different venues. 'Open space' refers to place for pleasure and recreation for the use of the public at all time, whereas 'open court or open alley' refers to a thoroughfare intended to be used as a means of access only. Moreover, only the adjective 'open' appears in both definition and by the choice of the noun 'space' and 'court or alley', Parliament has designated distinctive descriptions to these two differing locations. I

A We therefore do not regard these two terms as having analogous meaning. Nevertheless, we shall proceed to consider the respondent's argument founded on the legal maxim.

Noscitur a sociis (it is recognized by its associates) is a well established and frequently invoked principle of linguistic canons of construction by B which the meaning of two or more words which are receptive to similar meaning can be construed by considerations of the company in which the words appear and is associated with. As held in *Buddham Singh v Nabi Bux* AIR 1962 All 43, they take the colour from each other and the more general word is confined to the meaning comparable to the less general one, see also *Garforth (Inspector of Taxes) v Newsmith Stainless Ltd* [1979] C 1 WLR 409. Various Latin phrases or maxims, such as, *noscitur ex socio, qui non cognoscitur ex se* — what cannot be known by itself may be known from its associates; *copulatio verborum indicat acceptationem in eodem sensu* — the linking of words suggests treatment of them in the same sense, are indicative of the principle applicable to the rules of interpretation.

D In our present appeal, the terms 'public place' and 'street' have been defined separately and assigned two different meanings. Although these two terms appear under Pt VII of the Act, they are dealt with distinctively in two individual provisions. Even if at the widest stretch of our imagination, we were to proceed on the hypothesis that the term 'parking place' as defined in 'public place' is to be identified with the separately defined E word 'street' and thereafter associated with the general term 'public place', we are nevertheless unable to accept such an extravagant deduction.

To begin with, the word 'street' has been defined as a public (or private) roadway — see *Vestry of Mary Islington v Barrett* (1874) LR 9 QB 278. In *George Robinson v Local Board of Barton-Eccless, Winton and Monton* F (1883) 8 App Cas 798 it is associated with a highway. In *Corporation of Portsmouth v Smith* (1883) 13 QBD 184, the word 'street' was held to mean a thoroughfare and, in *Davis v Board of Works for Greenwich District* [1895] 2 QB 219, it is extended to include a cul-de-sac. On one part, we would agree that it is a place over which the public have a right of way.

G In contrast, the words 'parking place' although it can be on part of a road (at least that part of it), is not a thoroughfare or a passage which allows traffic to pass through and over which the public have a right of way. It is simply a place where members of the public can park their vehicles and if vehicles are parked at the place, there can be no right of way for any passing traffic. In *Ashby v Tolhurst* [1937] 2 KB 242 at p 249, Sir H Wilfrid Greene MR referred to the act of parking a car as follows:

> Parking a car is leaving a car and, I should have thought, nothing else.

Thus, a parking place is a place where one is entitled to leave one's car and nothing else to give rise to a right of way, thoroughfare or a passage over I which one has the right to pass.

Even if we were to apply the principle of *noscitur a sociis* to the present interpretation, we would have likewise arrived at a similar interpretation. The term 'parking place' must be associated with the words which

accompany it, viz 'open space', 'garden', 'recreation' and 'pleasure ground' — all of which as we had mentioned earlier refer to places for pleasure and recreation and not to a thoroughfare. In any event, the qualifying sentence to the definition which reads:

> ... set apart or appropriated for the use of the public or to which the public shall have at any time access

confirms our view that the legislature intended to confer to the public a right of access only and not a right of way.

In our opinion, the word 'street' is not analogous to the words 'parking place' and therefore is not a public place within the definition of s 2 of the Act.

We look upon the temporary closure of a street, even part of it as in the present case, in order to turn it into a 'pasar malam' which in turn had resulted in obstruction, health hazard and situation clearly detrimental to the residents of premises along Jalan SS 21/60, to be ultra vires the Act and against the public rights of road users. Public rights such as in the present case cannot be taken away by mere implicative language read out from a statute. Such an intention must be derived from a clear and unambiguous language. It must be shown that the legislature has authorised the thing to be done, irrespective of its possible interference with the existing right — see *Western Counties Ry v Windsor and Annapolis Py Co* (1882) 7 App Cas 178. To do otherwise is to destroy by a side wind public rights, an act which was not contemplated by the legislature — see *RV Strachan* (1872) 41 LJQB 210.

It may be said that the mere temporary closure of a road is an inconsequential and least detrimental act against the road users; that if there was any harm at all, it is in the form of interference with the peaceful enjoyment of those occupants who reside along Jalan SS 21/60. However, this court thinks that the damage goes further than that. Perhaps it is because we can visualize the sweat of desperation appearing on the faces of the proprietor whose house is about to be engulfed by fire and the firemen who is duty bound to extinguish it or a seriously ill resident and the ambulance driver who is committed to save lives, as they try to battle their way through the familiar pandemonium of the pasar malam.

We unanimously hold that the MPPJ's act in closing that part of Jalan SS 21/60, as discussed earlier (be it temporarily or permanently), is ultra vires s 65 of the Act. We accordingly set aside the order of the High Court, allow the application of the appellants herein and quash the decision, order and/or ruling made by the respondent on 26 May 1989.

The respondent shall pay to the appellants the cost incurred herein and in the court below.

Appeal allowed.

Reported by Loo Lai Mee